YEARBOOK OF INTERNATIONAL & EUROPEAN CRIMINAL AND PROCEDURAL LAW
Vol.3, 2024 Article 17

Restorative justice between culture, dialogue, civilization of human rights and wrongdoing

Andrea Pison

DOI:10.5281/zenodo.13995871

Recommended Citation

Pison, A. (2024). Restorative justice between culture, dialogue, civilization of human rights and wrongdoing. *Yearbook of International & European Criminal and Procedural Law, vol.3*, 856-879, Article 17

Available at: https://yiecpl.free.nf/index.php/yiecpl/issue/current

Restorative justice between culture, dialogue, civilization of human rights and wrongdoing

DOI:10.5281/zenodo.13995871

Andrea Pison, PhD in criminal law, UK. Attorney at Law

Abstract: This paper aims to shed light on how restorative justice can be an answer to the repair of wrongdoing. The main question is whether restorative justice is now a step forward towards culture, civilizational dialogue and protection of human rights. But is it so? Does restorative justice mean protection against and post factum of criminal conduct? Every human civilization and democratic state has the objective of not putting a list of penalties that continue to inflict every imaginable and/or not crime, but as a basis seeks to respond to justice through a continuous dialogue where it overcomes the silence of the past towards a civilization where repairing wrongdoing is now a reality not only in theory but in practice.

Keywords: restorative justice; penalties; domestic law; protection of victims; repair of wrongdoing; dialogue of jurisprudence; mediation; protection of human rights.

Introduction

In every democratic legal system that respects human rights, the topic of restorative justice (Breaithwaite, 1989; Wright, 1996; Walgrave, 2003; Walgrave, 2008; Dünkel, Grzywa Holten, Horsfield, 2015) is a necessity. It defines and includes a particular need at the disciplinary level. Also it reflects human life and the problem of punishment.

The diversity between culture and civilization offers a dynamic reality in socio-political relations particularly in the Western context. Such panorama of civilization is sensitive to a profound transformation of an egalitarian spirit to a bond that corresponds to the protection of individual rights and to subjective situations. Various alternatives are presented to shed light on a phenomenon considered as observed by tendencies of a model that exclusively privileges the expectations of a need that reflects the problems that are inherent to various phenomena of deviance.

The rational character determines the sustainable bases in front of a proclamation of principles that are not intangible but reflect a historical-evolutionary dimension within a strengthening of certain guarantees of values that have remained in the shadows given the lack of a possible legal protection. The original violence and the applicable legal forms influence the structures of justice, the forms that theorize the models as definable in

countries that write history in the sector of restorative justice.

Every leap of paradigms that are not communicable recognize the victims involving within the (modernity of) law. New rules develop domestic law towards an orientation that at an international level recognizes a progress in history. Such a progress affirms human rights to an enlightened perspective that establishes the exclusive guarantee of the law with a privileged way.

This happens according to the sovereignty of the nation and within a vision that the parallel development of the principle of self-determination of peoples conditions the internal and external relations of a country that has experienced wars, crises or other devastating phenomena and where respect for human rights have suffered violations.

Within a context of expansion of human rights that have a quantitative character a dimension is evolving destined to confer with an axiological way a particular respect to the parts. In this regard, human dignity operates in different sectors and the evolutionary process records in inclusive way the respect for a dignitas that attributes to the person a constitutive fabric of relations to a social body where the law embraces the traditional limits to a content of effective validity.

Mediation to the interpersonal nature. The recognized wrongdoing of others

Restorative justice hesitates to address a connection that attributes to a phenomenon the role of renouncing revenge and to decisively reaffirm the existence of a conflict, of a former wrongdoing, as a prerequisite for an essential model that captures such a conflict in the sphere of legal claims. In a legitimate way, the system offers a reworking of the conflict that marks the path with a mediatic way, within a relational context. The implicating and conflicting subjects find space in a duty of a legal system that restores to the delinquent who has created victims a right that corresponds to the reciprocal communication of a prejudice for the interested subjects.

In a line of development, sources of European origin are solicited and are rich in implications within a framework of a coercive dimension. These are the response to a crime where it distances itself from the traditional logic of education. They also deal with the flexibility that is deprived of freedom in comparison with the interests and expectations of the offended person.

The relationship between relational subjects inspires the idea of a conflict composition to an illicit act that pushes the choice and respects the process to a final outcome of solution of such a conflict. The relationship descends to options that adopt and

have as final objective the construction of crimes within a spirit of interpersonality of the illicit act thus emerging a necessity that demands, rectius brings into existence an imbalance that is connected with the spheres of freedom and to a susceptible imbalance that recognizes the author as the same victim of the crime.

Such perspective is valorized into a sphere of interests of an ownership that is widespread and is translated within a filter of intersubjective context. This meaning expresses the relevance of a penalty that observes the projection to a total context of an interpersonal dimension. In a terrain where deviance captures an importance of priority of a respectful dialectic for others that illuminates contemporary thought and that invigorates a cultural sensitivity to a program that not only redeems the penalty but also legitimises the empirical level of the relative social motivations. It also confers an existential praxis to a profile that unbalances intersubjective relationships in a moment that founds the functional dynamics of a resolution to a reciprocal dialogue that nourishes a human justice far from personal feelings.

Alternative solutions in the topic of forgiveness risk trivializing the representation of the human face towards the guilty. In this way, the suffering of a choice of forgiveness deeply matures the intense involving ones that assimilate the feeling of good in the media.

The logic of forgiveness responds to the schemes of classical justice, traditional to a context where the only process of emotion is the presupposition of a will to a choice that adds, filters the religious dimension of a strong decision. Such commitment consists of a willingness where the wrong deepens the fight that restores a strong relationship between the victim and the one who tries to help.

Justice for all. Maybe after an update

The in-depth reflection of the thought of restorative justice, as a key to reading the reports developed for control, the management of deviance phenomena and not only, brings an analytical reflection of trends that found a propensity that establishes a comparison of experiences that are distant from each other and homologable.

The attempt to reactivate an idea of experience of the form of justice that goes forward and that is cultivated since the Middle Ages is represented as a novelty evaluating human rights destined for a negotiating perspective compared to the work of a mediator who directs the dialogue between the parties. This is a difficulty that penetrates cultural deficiencies that enhance the content of a greater understanding available at a European level.

It presents itself as a matter of a sort of negotiation that devalues the meaning that resembles a phenomenon of compensation of

damage within the framework of an either/or of an instrumental responsibility, where the alternative of revenge still needs clarification and focuses on a public dimension. Criminal justice that is above all public, official with antithetical points.

The autonomy of a power that is conferred, as a revenge in the form of organs, even judicial ones, guarantees the satisfaction of the victim of the crime. This is a conciliatory phenomenon that valorizes the tendencies revealed with a problematic way from a revenge that results in a modern form of privatization of justice, that is exposed to arbitrariness and to the management of consequences of the crime that reproaches the historical epochs of a lack of evaluation and of a relative control of the illicit.

This is an egalitarian tendency, where the jus dicere is entrusted to a judicial power by a revenge that appears to justice as an evolved model of public justice oriented to private individuals that can also be assessed as such in time.

In other words, it is a type of justice inspired by and approachable to the victim of the crime. The profile of restorative justice is linked to a different scenario where it highlights the mediator who defines the terms of a subject of an institutional dimension of justice. It is a subject of a dual relationship, cultivated and of a private nature.

The quality, references, skills are sensitive to international documents and European acts. They are directed towards

legislative policy and within systems that assimilate other roles at the time the position of a conciliatory nature is assessed.

The goal of a deep humanism of involving subjects balances every matter that should be closed, preparing thus a ground that is able to stimulate, increase the reasons, the conditions of the perspectives of others within the strength of a dialogue where the mediator himself is committed to promoting.

The mediator makes a constructive dialogue by establishing a procedure that follows through intermediate steps and guided by the progressive elaboration revealed in an effective way, respecting the situation that is the object of a mediating work. Thus, the mediator declines from the ethical level and is differentiated from the magistrate who respects the relative duty of impartiality of the judgment and the responsibility of the accused. The latter conforms to an ethic that favors the process of responsibility and dialogue as a prelude to a different way that respects the suffering and expectations of the offended.

The logic of mediation is not limited to a quid pro quo of a private basis. It involves the overall meaning of a mediation procedure where it is charged with a symbolic value reflecting what justice must be done. It is a sign that reconstructs a bond subordinated to an economic plan that is expressed towards the life of the community itself.

The logic of composition, as suspected of transition agreements,

cultivates the possible pressures of the strongest on a relationship. In this regard, the relative restoration of human rights for both parties is essential. A communicative interaction is formed that characterizes the opinions that are accredited within a fabric of a social context, sensitive to a search that reaches an agreement of equal dialogue. The paradigm of justice puts in line an interpersonal path of a collective and regulatory nature towards the resolution of conflicts, where the procedures are too costly and suitable to prevent those that are intolerable from a legal point of view.

Injured party, criminal process and victim protection

The phenomenon of excessive composition reflects the idea of a phenomenon that takes a distinct meaning in the logic of revenge. This is how the techniques of a non-violent penal mediation are resolved, destined for a relationship of otherness that respects the violence of revenge.

It is sufficient to demonstrate the vision of a conciliatory nature that does not correspond to a comparison that renews the vision of the forms of solution to a conflict. Every shadow, in this regard, is connected with private justice that loses its meaning. The angle of observation, thus, presents the justice of a democratic state, where it evaluates and controls anti-repression by affirming and assuming a monopoly of force to the exercise

of the jus puniendi, posing a claim that explains the interest of the victim, as a reaction to the revenge of a wrong done.

The belief of a thought is evaluated highlighting the attitude of particular systems for the needs of the victims of the crime. The initiatives at the domestic level within the choices at the supranational level are inputs that come from the status of the victim. They are recorded thus the guarantees, the prerogatives that are varied to a presupposition of public persecution, i.e. the illicit acts that do not assume a role that respects the inconveniences that are in connection with the injury that has suffered consequences derived from the exercise of the jus puniendi.

The public nature of repression expresses a coherent need for vocation where the jus terrible shows powers of an institutional recognition of a solid and democratic legitimization that is conferred to an instrumental criminal process, that is, the personal expectations of the victims.

The substantial obligations of incrimination through awareness, which concerns the right and the process that reaches an evaluation of interests that is part of interests of victims, addresses their rights with a spirit of solidarity. The jurisdictional ailments are susceptible to cause damage, so the evolutionary tendencies respect the jurisdiction relative to the damages caused.

The tendency that respects the punitive power of an instrument is capable of a private reaction of the criminal justice system that filters the process through defense solutions. It is not a paradox for the offense of the judicial process to face the risks of secondary victimization that it entails.

The spread of victims, as a form of guarantees and defense for their vulnerability of evidentiary choices, affirms the assistance of the compensation process that is adequate and represents a breeding ground for human rights, worthy of protecting the judgment and the punishment to the recipient of the offense. In this way, the reactive tools are harmonized guaranteeing the victim against a punitive management.

Alternatives for restorative justice. Contributing to positive prevention as a dynamic basis of penal execution

The issue is not always the prevention of victims but also the moment when certain criminal things happen and the dignity of the offended requires for the victims to share the suffering. Even spontaneous uncertainties reveal the meaning of a mediation that does not show and does not offer the inadequacies of remedies in favor of the offended people.

The victims aspire to a satisfaction of their rights in case they influence the process and receive the attention of recognition. The path of the commitment of active participation for the guilty

party arrives at solutions that bring greater benefits in favor of the consequences, when the offense has been created.

The radical form that offers an advantage to the responsibility for the guilty is a way out of a process that respects the jurisdictional activity admitted for the purposes of domestic, European and international justice. It necessarily requires the use of similar positions of instrumentality that reaffirm the sense of conciliatory justice that is harmonized towards a regulatory requirement which responds to the illicit and seeks to reach and satisfy the instances of prevention that constitute a criminal policy for the rule of law.

The protection of victims is effective for a social equalization of a media type. It strengthens collective security within a circle consistent with the logic of a system of mediating solution, susceptible to include and close the widespread needs for the prevention of a general and special dimension that receives important recognition and is available to involve conflictual events.

The phenomenon of mediation based on the mediating ideology increases over time the interpersonal dialogue, that enhances the availability of the interlocutor, who evaluates the condition of others, in places where the recipients welcome the request for justice. The mediation of a positive outcome remains to the feelings of ambiguity, to the dissatisfaction on the part of the

victims.

The effects of a media process is available to the search for a mutual talk, as an effort of understanding, where the potential of the model under investigation passes to the difficulties of a path that limits the perspective of a far-sighted vision. This is a perspective of the dialogue of a mutual listening that influences the parties.

In other words, it is a favorable initiative, a project that is taken into consideration. It is also a circle that appears and covers, with an innovative way, the evolution of a judicial model that responds to deviances, as a new culture where the human profile is ignored. The culture reminds the interventions of a balance to the advantage of the victims as well as the objective of limiting the environment of a context that conditions the exercise of jurisdiction.

We are witnesses of a peaceful evolutionary process, of a procedure where the necessary reminders promote the mediation of the offended. Thus, the recipients risk not repairing the victims in a decisive way. Likewise, the outcome of the procedure directs the needs of the victim towards a difficult path for the person to be judged. It is oriented towards impunity and evaluates favourably the prevention of recidivism.

The considerations made are part of a dialogue that attempts to present the offended persons as irrelevant subjects. These are

considered within the mediation that is resolved through conciliation. The search for a settlement varies in known forms and the meeting of the parties of a conflict now has a symbolic character for the communication of the victim and the offender. It is a prelude to repair as well as for a vision that evolves the illicit through mediation and ordinary justice.

This process accesses the dialogue as interpersonal communication of a search for motivations for a conflict. The effective development of such a dialogue leaves the dynamics connected to a process of consideration of the position of the victim which convinces the author of the conflict that he is part of the illicit act.

Attempting an agreement under the profile of media activity, where the fulfillment of limitations is apparent to a justice susceptible to the transmission of a victim that the offense remembers, nourishes the desire to heal the consequences of an event that preserves the choices of the rights of others.

The valorization of a path, which is part of a domestic, European, international context, according to restorative justice programs, is part of the execution phase of the sentence, that regulates and records directly. The proposed laws are formed to introduce a discipline of media solution, where it recognizes the impulse of many acts that come from the European and especially international context of international criminal justice.

In this way, the offer of the interested party is foreseen, as an opportunity for reflection regarding the criminal act committed. That is, of motivations and consequences that are produced for the victim and the possible actions that seek to repair.

The mediation process uses as a tool the use of punishment that pursues the needs of a deflationary nature resizing the effective role of a model that is placed in a penitentiary treatment area. It takes the position of an open vision of an axiological dimension as well as of a functionality that respects the objectives of a restorative solution that it is able to express. Mediation is the original type of circumstance where non-authoritative justice reflects in an emblematic way on the executive phase of a path of deprivation and suffering that replaces the subjection of a commitment making responsible the availability of a project for the future.

This profile concerns the guilty party, who tries to make people speak, in favor of a conciliation path, that highlights the considerations of a phenomenon, where the victim of the crime emphasizes a role of primum movens for the restorative model. Thus, the victim encounters the conflict by spending time in a drama searching for the guilty person by reworking his profile of solitude, of confusion, of bad feelings, of pain in front of a gesture that causes endless suffering, as a cause that concludes, expresses the conceptual binomial.

It is the substance of a mediating model that integrates the method of an idea that designs the method that it pursues. Thus, a space is allowed as a measure of a method where the meaning under the human profile involves the teleological, practical and applicative level.

Reparative conduct that does not follow the path of mediation

The strategies for a restorative justice, which expresses the overcoming of tradition and corresponds to the crimes of original provision of a sanctioning nature, are an official response to the crime that is directed towards old and new paths of compensation and repair. The conceptual framework of conflict mediation, through reasons of inertia and resistance, regulates a new system, that considers the recurrence of crimes in a frequent, indeterminate and widespread way.

This is a result of continuous wars and not only of integration mechanisms. The protected interest, as a counterpart, is available to perform services that justify impunity and the attenuation of the sanction. The truth affects the logic of the conflict of an interpersonal nature. Thus, the illicit opens the way to the use of a spectrum for restorative justice. In this regard, international crimes deserve the autonomy of reconciliation strategies.

We also have taken into consideration the investigations that are dedicated to the economic, financial matter of environmental issues, where the specific phenomena of a distortion of exploitation of market mechanisms are highlighted. Integrating the balance of various ecosystems, in an appropriate way, is like a contextualization of intersubjective dynamics to the object of protection that brings out the negative influence of personal expectations, which are connected to the object. In other words, it is a protection that brings out the negative influence on personal expectations of enjoyment on bases that are on the same level with the interests that need to be protected.

A priority requirement is the guarantee of the game that is often played at the time, when conducts that have to do with abuse and affect the terms of the activity's risk, are avoided. As the insider trading where it represents an example of a game in favor of those who have particular information that is confidential and that intervene to cover the risk that others run.

In this way, events that are specular to a manipulation of the market are structured in a similar way where the information of the reserves that they create is exploited. They also spread false news capable of altering the representations of the risk, where the operators within a particular context give basis and place to the transactions.

Within this profile, the criterion of reasonableness is also

connected as an extrema ratio where the valorization of various omissions is intensified and attributed to a legal consistency that has as its objective to protect others. This reflected in the ideas that have as their basis to educate in an important way and attributing to the obligation towards others.

The difficulties are evident and continue since politicians often do not appreciate the victims and the importance of restorative justice. It is an open problem that leads to the generalized use of a mediation institute, where the activities of a restorative content are denied and always remain widely diffused in a field of paradigms articulated with the phenomenon of non-punishability. Thus the forms, the typologies that have entered every code, every domestic, European, international legislature put the phenomenon of non-punishability at an outdated level.

The effects are multiple as are also the forms, the typologies that put the voluntas operandi of an author to the degree of expressing the antagonistic choices that respect the illicit, as a choice of systems for the satisfaction of a general plan, level of prevention and protection.

On the basis of incriminating prediction, the judgment of a precept is underlined. It is independent of a specific sanction and requires with a necessary manner the punishment of an event that follows the illicit.

The sanction considers, examines, controls, evaluates in a

temporal manner and re-discusses in a detailed and critical manner the measures, the purposes of an order that satisfy the reasons that embody the active contribution of the same person of the guilty party, re-establishing the conditions that express the sense of protection.

In this perspective, it is worth welcoming the trend that values and configures the ex lege prescription of restorative conduct, as an autonomous form of sanctioning options from the prison sentence. Thus, the choice that meets objections seems difficult. Objections, different objectives, where the international criminal justice is based, are spread within the imperative community.

Therefore, the international criminal justice is confronted with a rational way without falling into the utopia of a society that is not perfect but democratic. In it, the risk of credibility is discussed as a starting point of a dimension, which associates the threat to sanctions with a typological and limited motion. Sanctions are more expressive in terms of disvalue, thus adopting a model of detention even at home, as we have seen in various domestic systems.

The same restorative conduct dynamically evaluates the developments subsequent to a crime that bring out the non-punishability, as a meaning of a choice, that counteracts the respect of the illicit, thus evaluating the jurisdictional body for the lapses, the preventive, general needs of a special prevention

to the penalty that is established at the beginning.

Conclusions

The paths of restorative justice are now ways of the phenomena of ante and post facts. They are disciplined in a system of phenomena that have gone to continuous diffusion experimenting with a disciplinary way some forms that suspend the process that allows the activation of various restorative paths, such as restorative justice. With a decisive way the limits of the space of the themes are proposed to pass to thoughts of a superior civilization, where the typical figure of the cause as non-punishability presents itself as an original example of conduct, of an integrative function, of application of the choice that prevents the consummation of the crime. Thus, with a fundamental way a theorization of an immediate damage is carried out where it represents the danger as essential for the purposes of punishability.

The crime is repeated thus constituting a circumstance of the sources for a period. With an essential way the objectives of the punishability of crimes are repeated thus constituting the circumstances that imitate, respect the behaviors contra legem.

Repeating a crime is equivocal with a particular meaning, that objects the sense of punishment, where with a final way directs the precise vision of the preventive role, towards a commission

of a legally foreseen fact. So basically the presuppositions of a legitimation both at a political and social level of the choice resorts to a punishment where it is not necessarily adequate to repeat the facts that recur for a punishment. So the punishment with an unjustified way follows the threat that concerns the conduct as supervening.

The mediated damage results as a counter-action where voluntarily demonstrates the facts that disturb the subjects, that is the relative safety of the associates. So we can talk and draw new arguments for the bold, where the necessity of punishment presents itself as a watchword of a choice.

The entry of restorative justice presents itself as a solution that tends to reduce the criminal to a guiding principle of a personal level that takes into consideration the needs of the victim of the crime, the chances of an effective redemption by the author of each illicit act.

Restorative justice is now like an institution of domestic, European, international criminal law where it analyzes the evaluations of a preventive character, of the concerns that signal the reductions that significantly characterize and present the criminal profile of a level.

The overall strategies of each penal reform are played as a post fact. They consider the phenomenon of tenuity captures as a counterbalanced role that respects the punitive need, that is, a

profile in front of every denial of the criminal following where even if devoid of reverberations or of civil relations it is not at all negligible.

The continuous path of past experiences that are rich and varied, matured also by other domestic and European systems. This path puts in an unavoidable basis the answer to the questions that concern the relationships with the reparation. A relationship that is widespread within the criminal, penal universe. The perplexities are many and the normative choices of tenuity, of the burden at a concrete level and in favor of the victim in its total level are now a choice that feeds, destined the now appreciable field of restorative justice.

Thus, the presence of restorative conduct is highlighted. It takes into consideration every relevance of the judgment of non-punishability. The opinion of overcoming, from a teleological point of view, the obstacles that derive from every normative formula that denies the gaze that is conditioned to every discipline that is valid, are so explicit to a temporal context where it respects the illicit and contributes in an appreciable way to the needs of the application of restorative justice.

The elaborations both in the Western and Eastern European level (Hertz, 1873; Bruns, 1986) do not lack favorable positions and continuous research that enhances the lines of thought where the element of guilt is important for the illicit. The

preventions are coordinated so that they are no longer decipherable in the light of the subsequent modality of use of the results that reveal the moment of realization.

This dimension assumes the components of the crime within a teleological thickness that leads to insufficiency the purposes of restorative justice. Too much or too little the questions relating to restorative justice are certainly many in the height of expectations at a theoretical, scientific level.

The intervention of a present and future system finds answers at the level of expectations that every democratic government that respects human rights, the values of the Union and the principles of international law is aware. It has to do with a dynamism that evaluates with a formal way the categories and various levels of choices within the sphere of a domestic, European and international penal intervention.

References

Braithwaite, J. (1989). *Crime, shame, reintegration.* Cambridge University Press, Cambridge.

Bruns, H.J. (1986). *Leitfaden des Strafzumessungsrechts.* C. Heymanns, Köln-Berlin-Bonn-München, 192ss.

Dünkel, F., Grzywa Holten, J., Horsfield, P. (2015). *Restorative justice and mediation in penal matters I, II.* Forum Verlag Godesberg: https://rsf.uni-greifswald.de/storages/uni-greifswald/fakultaet/rsf/lehrstuehle/ls-harrendorf/Bd50_1_9783942865319.pdf

Hertz, T. (1973). *Das Verhalten des Täters nach der Tat.* Duncker & Humblot, Berlin, 74ss.

Walgrave, L. (2003). *Repositioning restorative justice.* ed. Willan, UK, Portland.

Walgrave, L. (2008). *Restorative justice, self-interest and responsible citizenship*. ed. Routledge, London, New York.

Wright, M. (1996). *Justice for victims and offender.* Waterside Press, Philadelphia.